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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

METROPOLITAN TRANSPORTATION AUTHORITY,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT MUNICIPAL ELECTRIC UTILITIES ASSOCIATION OF NEW YORK STATE'S BRIEF IN OPPOSITION

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The Municipal Electric Utilities Association of New York State ("MEUA"), an intervenor-respondent below, submits this Brief in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit ("Petition") submitted by the Metropolitan Transportation Authority ("MTA"). For purposes of this Brief in Opposition, MEUA accepts the following sections submitted by MTA in its Petition: Questions Presented, the Statement Pursuant to Supreme Court Rules 21 and 28.1,

Opinions Below, Jurisdiction, and Statutory Provision Involved. MEUA adopts the Statement of the Case included in the Background statement in the opinion below. *See* Petition at A-4-A-11. MEUA objects to the use of extra-record facts and facts without a record citation in the Statement of the Case presented by MTA.

SUMMARY OF ARGUMENT

This Court should not grant the Petition for a Writ of Certiorari filed by MTA for the following reasons. First, MTA has presented no issue of major national importance. Second, MTA has not presented an issue concerning which there is any conflict with any court or agency. Third, MTA has not presented an issue with any Constitutional implications. Fourth, the court below resolved the issue correctly in a well-reasoned and thorough opinion. Fifth, this Court should not be required to make the type of *de novo* factual findings which MTA deems necessary for an overturning of the decision below. Sixth, the issue which MTA asks this Court to resolve is applicable only to a single entity: MTA. In short, this Court should not spend its valuable resources in resolving a single issue relating to a single law with applicability to a single entity which has no Constitutional implications and involves no conflict between or among courts.

REASONS THE PETITION SHOULD BE DENIED

The MTA proposed that this Court review the decision in *Metropolitan Transportation Authority v. Federal Energy Regulatory Commission*, 796 F.2d 584 (2d Cir. 1986) because of the effect of that decision on a single entity—the MTA. It seeks to have this

Court make major *de novo* findings of fact in order to overturn the decision below. Finally, MTA seeks to have this Court modify the Niagara Redevelopment Act, 16 U.S.C. § 836 *et seq.*, by applying the principles of subsequent statutes[1] which do not mention the Niagara Redevelopment Act in their terms or their legislative history.

MTA poses four arguments in support of review by this Court. None of these arguments indicates that the issues raised are of such importance to encourage this Court to use its limited time in reviewing the decision below. Rather, all the arguments indicate that MTA is a single disappointed litigant, which seeks review solely to overcome an adverse decision below.[2]

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[1] MTA argues that the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, the Urban Mass Transportation Assistance Act of 1970, 49 U.S.C. § 1601 *et seq.*, and the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.*, should be used to determine Congressional intent in an Act which predated those statutes. Although the three statutes do express a general Congressional intent, they do not alter the meaning of all statutes which preceded them.

[2] This Court should deny the Petition for a Writ of Certiorari filed by MTA on the basis that it seeks review of a single issue affecting a single law and a single party. As this Court has stated:

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

Layne & Bowler Corporation v. Western Well Works, 261 U.S. 387, 393 (1923). MEUA notes that one other party below, Al-

First, MTA argues that the Niagara Project is a valuable resource and that the decision below has a substantial economic impact. Rather than focusing on the economic impact on itself—the only entity which would be affected if this Court acted upon the issues presented—MTA focuses on the economic impact on the entire Niagara Project. The impact on MTA itself is closer to the $6,200,000 impact cited in its Petition at 8, than to the hundreds of millions of dollars cited in its Petition at 7. The actual impact on MTA translates to an effect on MTA riders of approximately 3 mills—or less than one-third of a cent—per ride. *See* Tr. 639, R. 639. These amounts do not constitute such enormous sums that they, by themselves, would justify this Court's intervention.

Second, MTA argues that this case is one of first impression regarding the preference provision in the Niagara Redevelopment Act. MTA seeks such a narrow review of that preference provision that this Court would be required to review the preference provision a second time as to its applicability to any entity other than a single end-user. MTA is not even able to state unequivocally that any other end-user would be affected. Rather, it hypothesizes that another end-user somewhere "may" be affected by the

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legheny Electric Power Cooperative, Inc., has filed a Petition for a Writ of Certiorari and two parties below, Rhode Island Public Utilities Commission and New Jersey Board of Public Utilities have filed a Cross-Petition for a Writ of Certiorari. Although additional entities have an interest in issues in this proceeding which are different from the issue raised by MTA, MTA's Petition merely seeks review of a single issue affecting a single law and a single party.

decision below.[3] Such piecemeal review of a statutory provision is contrary to the policy of conserving this Court's resources.

Third, MTA appears to be claiming that this Court should grant Certiorari because the court below was wrong. MTA, like any party which has lost in the court below, naturally seeks to overturn the ruling. Even if the MTA were correct in its allegation of a mistaken decision below—which it is not—this Court should not grant Certiorari merely to reverse an error.[4]

In fact, MTA appears to ask this Court to make *de novo* factual findings in order to reverse the decision below. It asks this court, first, to speculate whether the Power Authority of the State of New York would, if granted the discretion to distribute preference power to a broad range of entities, act in such a way as to prevent dilution of such power. It seeks a *de novo* decision by this Court that "yardstick competition" is obsolete and asks this Court to determine what Congress would have done had "yardstick competition" been obsolete during passage of the Niagara Redevelopment Act. Additionally, it asks

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[3] Similarly, it hypothesizes that this Court would grant a Writ of Certiorari if there were a conflict between the Circiuts. Petition at 10. Because there is no such conflict, this Court should not act as if there were such a conflict.

[4] MEUA disagrees with every argument made by MTA in its Petition. The court below, in a thorough and well-reasoned decision, properly held that MTA is not a "public body" pursuant to the Niagara Redevelopment Act. Because this case is so obviously inappropriate for this Court's review, MEUA will not burden this Court with arguments in opposition to MTA's argument on the merits.

this Court for a *de novo* determination of whether the goal of "yardstick competition" is aided by the allocation of preference power to MTA. Such factual findings are appropriately made by the court or agency of original impression, not by the highest Court in the land. *See Anderson v. Bessemer City*, 470 U.S. ___, 84 L.Ed.2d 518, 528 (1985); *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 123 (1969); Rule 52(a), Fed. R. Civ. P. MTA's request that this Court make such factual findings in order to overturn the court below underscores the inappropriateness of MTA's petition.

MTA finally argues that the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, the Urban Mass Transportation Assistance Act of 1970, 49 U.S.C. § 1601 *et seq.*, and the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.* somehow transmogrified the definition of "public bodies" in the Niagara Redevelopment Act. This Court has consistently held that repeals by implication are not favored and that a later general statute cannot by implication modify an earlier specific statute except under limited circumstances not present here.[5] *See, e.g., Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976); *Fourco Glass Co. v. Transmirra Products Corporation*, 353 U.S. 222, 228-29 (1957); *Rodgers v. United States*, 185 U.S. 83, 86-89 (1902). Similarly, this Court should not hold that enactment

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[5] Those limited circumstances are where provisions in the two acts are in irreconcilable conflict and where the later act covers the entire subject matter of the first act and is clearly intended as a substitute. *See* Posadas v. National City Bank, 296 U.S. 497, 503 (1936).

of general laws can totally rewrite prior laws in order to give them a meaning not intended by their authors.

CONCLUSION

This Court should deny the Petition for a Writ of Certiorari. It involves a question which definitely applies to merely one entity and therefore lacks the national impact necessary for this Court's review. It does not involve a massive amount of money as related to that single entity. It does not involve a Constitutional question. It does not involve a conflict of legal interpretation between any courts. In short, the Petition seeks a determination by this Court of a single issue in a single law which applies to a single entity. This Court should not spend its valuable time on such a limited case.

Respectfully submitted,

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